IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

OP.No. 25910 of 2000(H)

PETITIONER:

ST.RITA'S ENGLISH MEDIUM U.P.SCHOOL, RP. BY REV. SISTER THRESIAKUTTY K.P. NANMARA P.O., PALAKKAD.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

1. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, NEW DELHI.

2. REGIONAL PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANIZATION, ERANHIPALAM P.O., KOZHIKODE.

BY ADV. SRI.N.N.SUGUNAPALAN
SRI.MATHEWS J.NEDUMPARA, SC,P.F.ORGSN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.25910/00.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE THE ORDER DTD.28.6.99 OF R2.

P2 COPY OF THE REVIEW PETITION DTD.1.11.99 BEFORE R2.

P3. COPY OF THE ORDER DTD.28.12.99 OF R2.

P4. COPY OF THE APPEAL DTD.5.2.00.

P5. COPY OF THE ORDER IN ATA.NO.71(7) 2000 DTD.19.7.2000.

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S.SIRI JAGAN, J.

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O.P.No.25910 of 2000

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Dated this the 7th day of February, 2007

J U D G M E N T

The petitioner is the St.Rita's English Medium U.P. School, being run by a congregation called “Sisters of Charity”. The school is aggrieved by Ext.P5 order of the Employees' Provident Funds Appellate Tribunal, whereby the appellate tribunal upheld Ext.P1 order of the 2nd respondent-Regional Provident Fund Commissioner that St.Rita's English Medium U.P.School and another school named, “Nirmal English Medium Nursery School, Nenmara” are liable to be clubbed together for the purpose of coverage under the Employees' Provident Funds and Miscellaneous Provisions Act (“the Act” for short). The 2nd respondent further found that on such clubbing together, the total number of employees would become 20 and therefore, the two institutions together are liable to be covered under the Act. The petitioner challenges these orders on the

grounds that these two schools are distinct and separate and do not have functional integrality and therefore, these two schools are not liable to be clubbed together. Consequently, according to them, they are not liable to be covered under the Act. The petitioner also contends that out of the 17 employees of the St.Rita's School four teachers, who are nuns, are not in receipt of any salary and therefore, they would not come under the definition of "employee" under the Act as a result of which they are not liable to be counted for the purpose of determining the number of employees for the purpose of coverage under the Act. Therefore, even if these two schools are clubbed together, the number of employees would not exceed 19 and therefore, for that reason also, these institutions are not liable to be covered under the Act, is the submission made by the petitioner's counsel.

2. I have gone through Ext.P1 order as well as Ext.P5 order. From Ext.P1 order it is clear that the enforcement officer who inspected the two

schools opined that these two schools are liable to be clubbed together for the following reasons.

> "(a) Annual day function of the Scheme [sic] are celebrated jointly.
>
> (b) There is only one parent – Teacher Association for both the Institutions put together.
>
> (c) Appointment of the teachers are done for both the Schools by the congregation and not by the individual Manager of the School.
>
> (d) The unit of purpose for both the units is imparting education and they are educational institutions.
>
> (e) Upto the year 1990, both the units of the congregation functioned as one and the same in a single building. It was only for the administrative convenience and expansion purpose Nursery Section is transferred to the new building owned by the congregation.
>
> (f) All the U.K.G. Students of the Nursery School are promoted and sent to the Ist Standard of the U.P.School as a matter of routine which ensures the continuity of the education of the students."

(errors as in the original)

On the basis of these findings of the enforcement officer and on other materials, the 2nd respondent came to the conclusion that both schools are run by the congregation called "Sisters of Charity". It was also found that the Mother General of the congregation has got the ultimate control over both

the educational institutions of the congregation. It was further found that both these institutions were originally established in a single building and subsequently, they were separated for expansion activities. On these findings, the 2nd respondent came to the conclusion that these two schools had unity of ownership and functional integrality.

3. Of course, the learned counsel for the petitioner points out that in Ext.P5 order the Tribunal had entered a finding that the appellant is not employing 20 or more persons in their establishment and in spite of that, on the basis of a process of surmises and conjectures, the Tribunal has come to the conclusion that going by the practice in the State of Kerala where Christian congregations are engaged in establishing schools and colleges by establishing different societies, these educational institutions should be deemed to be managed and controlled by the same congregation. Of course, Ext.P5 order by itself, may not be satisfactorily worded in the matter of concluding

that the two educational institutions should be clubbed together, but on a reading of Ext.P1, I am more than satisfied that the 2nd respondent has given very cogent and convincing reasons for ordering that these two educational institutions are liable to be clubbed together for the purpose of coverage under the Act. The reasons quoted above are more than sufficient to support the conclusions reached by the 2nd respondent in the matter. The contention of the counsel for the petitioner that in the petitioner's school out of the seven employees, four nuns cannot be treated as employees, also does not hold water, since the headmistress of the petitioner school had categorically admitted before the 2nd respondent that those nuns were in fact in receipt of small amount as a token salary. After having admitted that those nuns are in fact receiving salary though lesser than other teachers, it cannot be held that they do not come within the purview of the definition of employee under the Act.

In the above circumstances, I do not find any reason to interfere with Ext.P1 order and the ultimate conclusion in Ext.P5 order. Accordingly, the original petition is dismissed.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.25910 of 2000

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J U D G M E N T

7th February, 2007